

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 15, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP798  
STATE OF WISCONSIN**

**Cir. Ct. No. 1999CF213**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**KEITH A. POPHAL,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Lincoln County:  
JOHN M. YACKEL, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Keith Pophal appeals an order denying his petition for a writ of error coram nobis. Because the petition does not meet the criteria for a writ of coram nobis, we affirm the order.

¶2 Pophal was convicted of substantial battery in 2000 and was sentenced to one year in jail. His attorney filed a motion to modify the sentence. The court granted the motion and reduced the sentence to nine months. In 2005, Pophal was convicted of a federal offense, and the substantial battery charge served as the basis for a sentence enhancer. In 2012, Pophal filed a “Pro Se Coram Nobis Petition and/or Any Other Applicable Postconviction Rule/Statute,” in which he asked the trial court to vacate his conviction based on his attorney’s failure to file a notice of appeal. The circuit court initially construed the document as a motion under WIS. STAT. § 974.06 (2011-12), and denied the motion. Pophal filed a motion for reconsideration, requesting the court to consider the document a coram nobis petition. On reconsideration, the court denied the petition and Pophal appeals.

¶3 The scope of a petition for a writ of error coram nobis is very limited. *See State v. Kanieski*, 30 Wis. 2d 573, 576, 141 N.W.2d 196 (1966). Its purpose is to give the trial court an opportunity to correct its own record of an error of fact unknown at the time of trial, which was of such a nature that knowledge of its existence at the time of trial would have prevented entry of the judgment. *Mikulovsky v. State*, 54 Wis. 2d 699, 721, 196 N.W.2d 748 (1972). A petition for a writ of coram nobis must establish two things: (1) no other remedy is available; and (2) a factual error exists that was crucial to the ultimate judgment and was not previously decided by the trial court. *Id.*

¶4 Pophal’s petition does not meet the criteria for the second factor. The alleged error of his counsel not filing a notice of appeal is not an error of fact. In addition, it did not occur before the conviction, and knowledge of its existence would not have prevented entry of the judgment of conviction.

¶5 Although his petition asked the trial court to vacate the judgment, Pophal insists he is not attacking the validity of his conviction. Rather, he claims he only seeks an order “clarifying that his trial and appellate attorney abandoned him on appeal.” If he is not challenging the validity of his conviction, it is not clear what remedy Pophal sought in the petition. The circuit court has no authority to extend the time for filing a notice of appeal. *State v. Rembert*, 99 Wis. 2d 401, 406 n.4, 299 N.W.2d 289 (Ct. App. 1980). The declaration Pophal seeks would have no effect on his conviction or his right to appeal and is not properly brought by a petition for a writ of coram nobis.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

